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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEDRO AVILA TORRES,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-72439

Agency No. A200-098-483

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 3, 2008^{**}

Before: TROTT, GOULD and TALLMAN, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order dismissing petitioner Pedro Avila Torres' appeal of the Immigration Judge's

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

order premitting his application for cancellation of removal pursuant to 8 U.S.C. § 1229b(a).

The Immigration Judge found petitioner ineligible for cancellation of removal based on his 1996 conviction for violation of California Health and Safety Code section 11352. The record shows that petitioner, while represented by counsel, admitted in his testimony before the Immigration Judge that his conviction for violation of section 11352 was for possession of cocaine which rendered the conviction a controlled substance offense. A.R. 31. The Immigration Judge therefore premitted petitioner's application for cancellation of removal based on his conviction for a controlled substance offense that is categorized as an aggravated felony. *See* 8 U.S.C. §§ 1101(a)(43)(B), 1229b(a). Petitioner, represented by the same counsel, filed a notice of appeal to the BIA which included a one-line statement: "the Immigration Judge erred in denying appellant's application for Cancellation of Removal for certain non permanent residents under section (240(b)(1) [sic] of the Act." A.R. 8. Counsel also checked the box indicating that he would file an appeal brief, but he did not do so. The BIA decision noted petitioner's failure to file a brief and cursory statement of the issue,

stating that petitioner had failed to cite any basis for appeal or legal authority. The BIA concluded that

[r]egardless [of petitioner's failure to raise any issues], the Immigration Judge reasonably concluded that the respondent was ineligible for cancellation of removal pursuant to section 240A(b)(1)(C) of the Act (I.J. at 2; Tr. at 16; Exh. 5). In this regard, we find no clear error in the factual findings of the Immigration Judge... [and] the Immigration Judge properly determined that the respondent failed to establish his eligibility for cancellation of removal under section 240A(b) of the Act (I.J. at 2-3).

Petitioner then filed the underlying petition for review pro se. To date, the only filing he has made in this court is a combined petition for review and motion for stay of removal. The combined filing is five sentences long and does not raise any legal or factual issues with the BIA's decision. In addition, petitioner has not raised a challenge to the Immigration Judge's eligibility finding or filed an opposition to the government's motion for summary disposition. Accordingly, petitioner has not exhausted this issue and we have no jurisdiction to reconsider the propriety of the aggravated felony determination. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (court lacks subject matter jurisdiction over legal claims not presented in administrative proceedings below).

Respondent's unopposed motion for summary disposition is granted because the remaining questions raised by this petition for review are so insubstantial as not

to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

All other pending motions are denied as moot. The temporary stay of removal shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.